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16  
17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19  
20

21 IN RE WELLS FARGO & COMPANY  
22 SHAREHOLDER DERIVATIVE  
LITIGATION

Lead Case No. 3:16-cv-05541-JST

**SUPPLEMENTAL JOINT DECLARATION  
OF RICHARD M. HEIMANN AND  
JOSEPH E. WHITE, III IN SUPPORT OF  
(1) CO-LEAD PLAINTIFFS' MOTION FOR  
FINAL APPROVAL OF SETTLEMENT,  
AND (2) CO-LEAD COUNSEL'S MOTION  
FOR AWARD OF ATTORNEYS' FEES AND  
REIMBURSEMENT AWARDS TO  
CO-LEAD PLAINTIFFS**

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1 We, RICHARD M. HEIMANN and JOSEPH E. WHITE, III, jointly declare and state as  
2 follows:

3 1. Richard M. Heimann is an attorney duly licensed to practice law in the State of  
4 California and admitted to practice in this Court and other federal courts. Mr. Heimann is a  
5 founding partner at the law firm Lieff Cabraser Heimann & Bernstein, LLP (“Lieff Cabraser”),  
6 which serves as counsel for Co-Lead Plaintiff Fire and Police Pension Association of Colorado  
7 (“FPPA”) and Co-Lead Counsel in the above-captioned shareholder derivative action (the  
8 “Action”).

9 2. Joseph E. White, III is an attorney duly licensed to practice law in the States of  
10 Florida, New York, Massachusetts, and Pennsylvania and admitted to practice in this Court *pro*  
11 *hac vice*. Mr. White is a founding shareholder at the law firm Saxena White P.A. (“Saxena  
12 White”), which serves as counsel for Co-Lead Plaintiff The City of Birmingham Retirement and  
13 Relief System (“Birmingham”) and Co-Lead Counsel in this Action.

14 3. We have personal knowledge of the matters set forth herein based on our active  
15 supervision of and participation in the prosecution and resolution of the Action, and if either of us  
16 were called upon as a witness, we could and would testify competently thereto.

17 4. We make this Supplemental Joint Declaration in support of Co-Lead Plaintiffs’  
18 motion for final approval of the proposed Settlement.<sup>1</sup> The Settlement will resolve, on behalf of  
19 Nominal Defendant Wells Fargo & Co. (“Wells Fargo” or the “Company”), all claims asserted in  
20 this Action against the Defendants.<sup>2</sup>

21 5. We also respectfully submit this Joint Declaration in support of Co-Lead  
22 Counsel’s motion (i) for an award of attorney’s fees in the amount of \$68 million; and (ii) for  
23 reimbursement awards of \$50,000 in the aggregate for the time and effort Co-Lead Plaintiffs

24 <sup>1</sup> Unless otherwise defined, capitalized terms appearing herein shall be defined as provided for in  
25 the Stipulation & Agreement of Compromise, Settlement and Release dated February 26, 2019  
(Dkt. 270-1) (the “Stipulation”).

26 <sup>2</sup> Defendants are: (i) John G. Stumpf, Timothy J. Sloan, Carrie L. Tolstedt, John R. Shrewsberry,  
27 and Michael J. Loughlin (the “Officer Defendants”); and (ii) John D. Baker II, Elaine L. Chao,  
28 John S. Chen, Lloyd H. Dean, Elizabeth A. Duke, Susan E. Engel, Enrique Hernandez, Jr.,  
Donald M. James, Cynthia H. Milligan, Federico F. Peña, James H. Quigley, Judith M. Runstad,  
Stephen W. Sanger, Susan G. Swenson, and Suzanne M. Vautrinot (the “Director Defendants”).

1 expended in representing Wells Fargo's interests, which amount will be paid from Co-Lead  
2 Counsel's fee award.

3 **I. PRELIMINARY STATEMENT**

4 6. Following more than two years of active and vigorous litigation, Co-Lead  
5 Plaintiffs and Co-Lead Counsel have reached a significant Settlement of this shareholder  
6 derivative action on behalf of Wells Fargo to settle claims arising from the creation of  
7 unauthorized or fictitious customer accounts at the Company (the "Improper Sales Practices").

8 7. During the course of this Action, Co-Lead Counsel worked diligently and  
9 dedicated substantial resources toward advancing this case. After significant litigation efforts,  
10 extensive negotiations, and careful consideration of both the strength of Plaintiffs' claims and the  
11 significant risks of continued litigation, Co-Lead Plaintiffs and Co-Lead Counsel succeeded in  
12 securing the recovery of (i) a \$240 million monetary payment from Defendants' insurers to Wells  
13 Fargo; and (ii) acknowledgement from Wells Fargo that facts alleged in the Action were a  
14 significant factor in causing certain corporate governance changes and remedial steps with respect  
15 to compensation reductions and forfeitures to be implemented, which conferred a value to Wells  
16 Fargo of \$80 million. The resulting total settlement value is \$320 million.

17 8. Before agreeing to settle this Action, Co-Lead Plaintiffs undertook extensive  
18 efforts to advance Wells Fargo's claims and to ensure that the Company was in a position to  
19 maximize its recovery. These efforts included, among other things: (i) conducting significant  
20 legal and factual investigation into the events underlying Wells Fargo's claims; (ii) drafting  
21 detailed complaints, including the Consolidated Amended Verified Shareholder Derivative  
22 Complaint filed on February 24, 2017; (iii) achieving the denial in large part of two sets of  
23 motions to dismiss; (iv) engaging in extensive efforts to consolidate, coordinate, dismiss, or stay  
24 numerous related shareholder derivative actions across the country, in order to protect Wells  
25 Fargo's claims against collateral attack based on potentially adverse rulings in those cases; (v)  
26 aggressively pursuing document discovery, which resulted in the review of over 1.1 million pages  
27 of documents and the composite total production of 727,679 documents from Defendants and  
28 seven non-parties, comprising 3,529,385 pages; (vi) preparing for the anticipated depositions of

1 over 40 fact witness, including the 20 named Defendants; and (vii) consulting with several  
2 experts and consultants to develop a comprehensive approach to establishing liability and  
3 damages in the Action.

4 9. As a result of these efforts, Co-Lead Plaintiffs had a deep understanding of the  
5 strengths and weaknesses of the Parties' respective positions. This understanding was further  
6 deepened over the course of seven in-person mediation sessions, which were conducted by  
7 experienced and renowned mediators. In preparation for these mediation sessions, the Parties  
8 submitted several rounds of extensive briefing regarding key legal and factual disputes in this  
9 Action, made numerous presentations on liability and damages, and engaged in vigorous, multi-  
10 party debate about the strengths and weaknesses of their positions.

11 10. After lengthy negotiations, on December 12, 2018, the Parties accepted a  
12 Mediators' proposal to settle this Action. The Parties engaged in further discussion over the  
13 following months to memorialize the terms of their agreement in the Stipulation.

14 11. Co-Lead Plaintiffs brought their claims in good faith and continue to believe that  
15 their claims have merit. However, Co-Lead Plaintiffs recognize that there are legal and factual  
16 defenses to the claims asserted in the Action, which present substantial risks to the successful  
17 resolution of any litigation, especially in complex shareholder derivative litigation such as this  
18 Action. Accordingly, in light of these risks and based on their evaluation of the claims and their  
19 substantial experience, Co-Lead Plaintiffs and Co-Lead Counsel have determined that the  
20 Settlement, which confers substantial benefits upon Wells Fargo and its shareholders, is fair,  
21 reasonable, and adequate, and in the best interests of the Company and its shareholders.

## 22 **II. BACKGROUND OF THE ACTION**

23 12. This Action centers on Wells Fargo's decade-long pattern of misconduct with  
24 respect to "cross-selling"—*i.e.*, the sale of new products to existing Wells Fargo customers. Co-  
25 Lead Plaintiffs alleged that Defendants knew or consciously disregarded that Wells Fargo  
26 employees illicitly created millions of customer accounts without those customers' knowledge or  
27 consent, in order to meet unrealistic sales goals, thereby inflating the Company's cross-selling  
28 numbers (*i.e.*, the Improper Sales Practices).

1           13.     Co-Lead Plaintiffs alleged that to achieve their publicly touted goal of selling eight  
2 products per household—referred to as the “Great Eight” or “Gr-eight” initiative—Defendants  
3 imposed strict quotas regulating the number of products Wells Fargo bankers were required to  
4 sell. Those quotas translated into unrelenting pressure on Wells Fargo employees to open  
5 numerous accounts per customer and engage in unlawful account-creation practices. Since Wells  
6 Fargo’s success in cross-selling was central to its financial results and market participants’  
7 assessment of the Company, Defendants were also highly motivated to foster, and perpetuate,  
8 those unlawful practices.

9           14.     Furthermore, Co-Lead Plaintiffs alleged that, from at least January 1, 2011 to the  
10 present (the “Relevant Period”), Defendants knew about or consciously disregarded the Improper  
11 Sales Practices, did nothing to effectively address indications of pervasive misconduct at the  
12 Company, and even implemented policies that enabled the misconduct to flourish.

13           15.     As a result, Co-Lead Plaintiffs, as shareholders of Wells Fargo, brought this  
14 Action on the Company’s behalf for relief under federal and state law arising from Defendants’  
15 alleged misconduct.

16           **A.     Relevant Procedural History**

17                   **1.     Commencement of the Action and Appointment of Co-Lead Plaintiffs**

18           16.     On September 8, 2016, the Los Angeles City Attorney, the Consumer Financial  
19 Protection Bureau (“CFPB”), and the Office of the Comptroller of the Currency (“OCC”) each  
20 separately announced that fines totaling more than \$185 million had been imposed on Wells  
21 Fargo for widespread deficiencies and unsafe or unsound practices in Wells Fargo’s risk  
22 management and oversight of its sales practices. Specifically, Wells Fargo and its regulators  
23 disclosed and acknowledged for the first time that the Company’s employees had engaged in the  
24 Improper Sales Practices.

25           17.     Shortly after those public revelations, beginning on September 29, 2016, several  
26 shareholders, including Co-Lead Plaintiffs, commenced a series of putative shareholder derivative  
27 actions in this Court, in California state courts, and in Delaware Chancery Court.

1           18.     On December 12, 2016, pursuant to stipulation, this Court entered an order  
2 consolidating the following eight related shareholder derivative actions into this Action: (i) *Shaev*  
3 *v. Baker*, No. 3:16-cv-05541-JST; (ii) *Cook v. Loughlin*, No. 3:16-cv-05592-JST; (iii) *Sherman v.*  
4 *Stumpf*, No. 3:16-cv-05745-JST; (iv) *Elson, IRA v. Stumpf*, No. 3:16-cv-05817-JST; (v) *The City*  
5 *of Birmingham Ret. & Relief Sys. v. Baker*, No. 3:16-cv-05915-JST; (vi) *LeBendig v. Wells Fargo*  
6 *& Co.*, No. 3:16-cv-06262-JST; (vii) *Hannon v. Loughlin*, No. 3:16-cv-06624-MEJ; and (viii)  
7 *Fire & Police Pension Ass'n of Colorado v. Stumpf*, No. 3:16-cv-06631-JST. Dkt. 39. Among  
8 other things, the stipulation and order also specified that “[a]ny other actions or claims filed in or  
9 removed or transferred to this Court after the date of this Stipulation that (i) are styled as  
10 shareholder derivative actions or claims brought on behalf of Wells Fargo and (ii) arise out of the  
11 same transactions and occurrences and involve the same or substantially similar issues of law and  
12 facts as the Related Actions, shall automatically be consolidated for all purposes, if and when  
13 they are brought to the Court’s attention.” *Id.* at 3. The Stipulation also set forth an agreed-upon  
14 schedule for the filing of motions for appointment of lead plaintiff and lead counsel. *See id.* at 5.  
15 A hearing on the matter was set for January 12, 2017. *Id.*

16           19.     Two groups of plaintiffs ultimately sought appointment as lead plaintiffs in this  
17 Action. Plaintiffs FPPA and Birmingham jointly moved to be appointed as co-lead plaintiffs and  
18 to appoint Lieff Cabraser and Saxena White as co-lead counsel. Dkt. 34. Plaintiffs Police & Fire  
19 Retirement System City of Detroit and Public School Teachers’ Pension and Retirement Fund of  
20 Chicago jointly moved to be appointed as co-lead plaintiffs and to appoint Bernstein Litowitz  
21 Berger & Grossmann and Bottini & Bottini as co-lead counsel. Dkt. 41.

22           20.     On January 12, 2017, following a hearing, the Court issued an Order: (a)  
23 consolidating a ninth action, *Public School Teachers’ Pension & Retirement Fund of Chicago v.*  
24 *Stumpf*, No. 3:16-cv-7089-JST, into this Action; (b) appointing FPPA and Birmingham as Co-  
25 Lead Plaintiffs; and (c) appointing Lieff Cabraser and Saxena White as Co-Lead Counsel. Dkt.  
26 70.

27           21.     The Parties then conferred and, on February 8, 2017, submitted a stipulated  
28 agreement governing the filing of a consolidated complaint and briefing on motions to dismiss.



1 Dkt. 80. With the exception of one proposed deadline (regarding the filing deadline for replies in  
2 support of motions to dismiss), the Court granted the stipulation and set a February 24, 2017  
3 deadline to file a consolidated complaint. Dkt. 81.

## 4 **2. Co-Lead Plaintiffs' Preparation and Filing of the Consolidated** 5 **Complaint**

6 22. Co-Lead Plaintiffs conducted an extensive investigation and review of relevant  
7 information in preparing its consolidated complaint. Specifically, Co-Lead Plaintiffs'  
8 investigation included a review of (i) filings by Wells Fargo with the U.S. Securities and  
9 Exchange Commission ("SEC"); (ii) findings or allegations by government entities in connection  
10 with investigations into the Improper Sales Practices; (iii) records of congressional proceedings;  
11 (iv) news articles; (v) securities analysts' reports about Wells Fargo; (vi) wire and press releases;  
12 (vii) documents received by the Los Angeles City Attorney in connection with its case against  
13 Wells Fargo; and (viii) additional information readily obtainable on the Internet.

14 23. On February 24, 2017, Co-Lead Plaintiffs filed the 189-page Consolidated  
15 Amended Verified Shareholder Derivative Complaint in the Derivative Action naming as  
16 defendants the Officer and Director Defendants, and alleging generally, on behalf of Wells Fargo,  
17 claims against the Officer and Director Defendants for breaches of fiduciary duty, unjust  
18 enrichment, breach of fiduciary duty for insider selling and misappropriation of information,  
19 violations of Section 14(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and  
20 Securities and Exchange Commission ("SEC") Rule 14a-9, Section 10(b) of the Exchange Act  
21 and SEC Rule 10b-5 (the "Section 10(b) Claim"), Section 20A of the Exchange Act, Section  
22 29(b) of the Exchange Act, Section 25402 of the California Corporations Code, Section 25403 of  
23 the California Corporations Code, corporate waste, and contribution and indemnification. Dkt. 83  
24 (the "Complaint"). As specified in the Complaint, some claims were asserted against all  
25 Defendants and some were asserted against a subset thereof.

## 26 **3. Motion to Dismiss the Complaint on Demand Futility Grounds**

27 24. On March 17, 2017, Wells Fargo moved to dismiss the Complaint for failure to  
28 plead demand futility pursuant to Rules 12(b)(6) and 23.1 of the Federal Rules of Civil Procedure

1 (the “Demand Futility Motion to Dismiss”). Dkt. 99. Defendants filed joinders to Wells Fargo’s  
2 motion. Dkts. 100 (Stumpf), 101 (Tolstedt), 102 (Director Defendants), 107 (Sloan), 108  
3 (Loughlin), 110 (Shrewsberry).

4 25. In the Demand Futility Motion to Dismiss, Wells Fargo and the Defendants set  
5 forth three primary reasons why Co-Lead Plaintiffs had failed to allege that demand on the  
6 Company’s Board of Directors (the “Board”) was futile: (i) a failure to allege “red flags”  
7 sufficient to establish that Board members “utterly failed” to oversee the Company, (ii) a failure  
8 to allege a substantial likelihood of liability for “pattern of conduct” and intentional  
9 misrepresentation claims, and (iii) a failure to plead that the Company’s outside directors lacked  
10 independence. Dkt. 99 at 10-23.

11 26. On April 3, 2017, Co-Lead Plaintiffs filed a 25-page opposition to the Demand  
12 Futility Motion to Dismiss. Dkt. 115. In their opposition, Co-Lead Plaintiffs primarily argued  
13 that demand had been excused because the Complaint sufficiently alleged facts to establish that a  
14 majority—indeed, all—of the Company’s Board members “would face a substantial risk of  
15 liability if the litigation were pursued.” *Id.* at 8. Relying on applicable Delaware law, Co-Lead  
16 Plaintiffs maintained that they “need only ‘make a threshold showing, through the allegation of  
17 particularized facts, that their claims have some merit.’” *Id.* at 8–9. Co-Lead Plaintiffs then  
18 identified specific allegations in the Complaint that supported a finding that (i) the Defendants  
19 had consciously disregarded the pervasive fraud at Wells Fargo, (ii) the Defendants had made  
20 false or misleading statements to shareholders, and (iii) the Director Defendants had disseminated  
21 materially false or misleading proxy statements.

22 27. On April 14, 2017, Wells Fargo replied. Dkt. 116. The Director Defendants filed  
23 a joinder. Dkt. 117. In its reply, Wells Fargo advanced further arguments in support of its  
24 position that the Complaint be dismissed for failure to plead demand futility. Wells Fargo argued  
25 that certain events of which the Defendants were allegedly aware were not “red flags” under the  
26 law, and that Co-Lead Plaintiffs had otherwise failed to plead facts establishing bad faith on the  
27 part of the directors. Moreover, Wells Fargo trumpeted its April 10, 2017 Oversight Committee  
28

1 Report as demonstrating Board action and knowledge contrary to the allegations in the  
2 Complaint.

3 28. On April 26, 2017, Co-Lead Plaintiffs moved the Court for leave to file a surreply  
4 to respond to an argument Wells Fargo raised for the first time in its reply brief. Dkt. 119. Wells  
5 Fargo filed an opposition to Co-Lead Plaintiffs' motion on April 28, 2017. Dkt. 120. On May 1,  
6 2017, the Court denied Co-Lead Plaintiffs' motion for leave but held it would "not consider  
7 [Wells Fargo]'s new argument" because it was first raised on reply, further reasoning that "even  
8 if the Court were to consider the argument, it would be compelled to reject it, because it has  
9 already been flatly rejected by the Delaware Supreme Court." Dkt. 122 at 1.

10 29. On May 4, 2017, following a hearing on Wells Fargo's Demand Futility Motion to  
11 Dismiss, the Court granted in part and denied in part the motion, holding that pre-litigation  
12 demand on the Board was excused and permitting Co-Lead Plaintiffs to pursue the surviving  
13 claims asserted in the Action on the Company's behalf. Dkt. 129 (the "Demand Futility Order").  
14 Of particular note, with respect to Co-Lead Plaintiffs' core breach of fiduciary duty claims, the  
15 Court concluded:

16 under both the standard for director oversight liability and the standard for director  
17 liability for breach of the duty of care when the company has adopted an  
18 exculpatory provision, Plaintiffs must "alleg[e] particularized facts that show that a  
19 director *consciously* disregarded an obligation to be reasonably informed about the  
20 business and its risks or *consciously* disregarded the duty to monitor and oversee  
the business."

21 The extensive and detailed allegations in the complaint plausibly suggest that a  
22 majority of the Director Defendants did precisely that.

23 *Id.* at 17 (quoting *In re Citigroup Inc. S'holder Derivative Litig.*, 964 A.2d 106, 125 (Del. Ch.  
24 2009)).<sup>3</sup> The Court concluded that the Complaint "create[d] a reasonable doubt as to whether a  
25 majority of the Director Defendants face a substantial likelihood of personal liability" and "that  
26 demand is excused as futile." *Id.* at 37. The Court denied Wells Fargo's and Defendants'

27 <sup>3</sup> Wells Fargo's certificate of incorporation contains a provision, pursuant to 8 Del. C.  
28 § 102(b)(7), eliminating the monetary liability of directors for certain breaches of duty, such as  
breaches of the duty of care. Compl. ¶ 533. However, the exculpatory provision cannot  
"eliminate or limit the liability of a director" for "any breach of the director's duty of loyalty to  
the corporation or its stockholders," "acts or omissions not in good faith or which involve  
intentional misconduct or a knowing violation of law," or "any transaction from which the  
director derived an improper personal benefit." *Id.*

1 Demand Futility Motion to Dismiss on this basis as to all but one of Co-Lead Plaintiffs' claims.  
2 *Id.* The Court granted the motion only as to Co-Lead Plaintiffs' claim under Section 25403 of the  
3 California Corporations Code after concluding that no private right of action existed under  
4 California law. *Id.*

5 30. Following the Court's favorable Demand Futility Order, the Parties conferred and  
6 submitted a proposed schedule for briefing a second round of motions to dismiss pursuant to Rule  
7 12(b)(6). The Court granted the stipulation on May 30, 2017. Dkt. 135.

#### 8 **4. Motions to Dismiss the Complaint on Pleading Sufficiency Grounds**

9 31. On June 5, 2017, the Officer and Director Defendants filed a series of five  
10 substantively similar motions to dismiss the Complaint for failure to state a claim pursuant to  
11 Rule 12(b)(6), with Defendant Stumpf joining in some portions of those motions. *See* Dkts. 139  
12 (Sloan), 140 (Tolstedt), 141 (Loughlin), 143 (Shrewsberry), 144 (Director Defendants), 145  
13 (Stumpf joinder). In general, Defendants argued that (i) all claims were insufficiently pled,  
14 particularly with respect to fraud-related claims; (ii) the claim under Section 25402 of the  
15 California Corporations Code should be dismissed in part on claim preclusion grounds; and (iii)  
16 the claim for contribution and indemnification were unripe. Specifically, the Officer Defendants  
17 argued that the Complaint's allegations about them were not sufficient to establish liability over  
18 them and that the Complaint largely focused on the Director Defendants. The Director  
19 Defendants argued that the Complaint relied on "shotgun" pleading and failed to meet the  
20 heightened burden of Rule 9(b) and the Private Securities Litigation Reform Act of 1995.

21 32. On July 5, 2017, Co-Lead Plaintiffs filed a 70-page omnibus opposition to the  
22 second round of motions to dismiss. Dkt. 151. Therein, Co-Lead Plaintiffs explained why each  
23 of their claims was adequately pled and viable as a matter of law. For example, Co-Lead  
24 Plaintiffs identified numerous allegations in the Complaint that the Officer Defendants received  
25 information from executive management about the Improper Sales Practices, giving rise to the  
26 strong inferences of *scienter* required for their Section 10(b) Claim and the conscious disregard  
27 required for their breach of fiduciary duty claim. *See id.* at 26–46.

1           33.     On July 26, 2017, the Director Defendants and Defendants Sloan, Tolstedt,  
2 Loughlin, and Shrewsberry filed reply briefs in further support of their motions to dismiss. Dkts.  
3 153 (Shrewsberry), 154 (Director Defendants), 155 (Tolstedt), 156 (Loughlin), 157 (Sloan).  
4 These replies continued to argue that Co-Lead Plaintiffs were improperly relying on the group  
5 pleading doctrine and could not allege facts specific to each individual defendant.

6           34.     On October 4, 2017, after vacating the hearing on the matter, the Court issued a  
7 49-page order that denied in large part Defendants' motions to dismiss, after finding that Co-Lead  
8 Plaintiffs had pled facts sufficient to sustain the vast majority of their claims. Dkt. 174 (the  
9 "12(b)(6) Order"). The Court held that the Complaint "does not engage in shotgun pleading" and  
10 did not exclusively rely on the group pleading doctrine. *Id.* at 18, 19. The Court dismissed (i) the  
11 Section 10(b) Claim against Defendant Loughlin without prejudice, (ii) claims for  
12 indemnification and contribution without prejudice, and (iii) claims under Section 25402  
13 California Corporations Code with prejudice. While rejecting the argument that the Section  
14 25402 claims were precluded by the non-final decision in a parallel state court action, the Court  
15 nevertheless dismissed them as barred under the internal affairs doctrine. *Id.* at 41–44. The Court  
16 sustained all other claims. *See id.* at 49.

17           35.     Accordingly, as a result of the 12(b)(6) Order, Co-Lead Plaintiffs were permitted  
18 to proceed with nearly all of their original claims: (i) the Section 10(b) Claim, (ii) a claim under  
19 Section 14(a) of the Exchange Act, (iii) a claim under Section 29(b) of the Exchange Act, (iv) a  
20 claim under Section 20A of the Exchange Act, (v) a claim for breach of fiduciary duty, (vi) unjust  
21 enrichment claims, (vii) corporate waste claims, and (viii) Delaware insider trading claims. *See*  
22 *id.* The same 20 Defendants named in the Complaint remained in the Action.

## 23                   **5.     Defendants' Answers**

24           36.     Following the Court's 12(b)(6) Order, the Parties conferred and submitted a  
25 stipulation proposing to extend the deadline for Defendants to file their respective answers to the  
26 Complaint. On November 13, 2017, the Court granted the Parties' stipulation and extended the  
27 deadline for answering the Complaint to January 8, 2018. Dkt. 183.

37. On January 8, 2018, Defendants filed separate answers to the Complaint. *See* Dkts. 187 (Stumpf), 188 (Tolstedt), 189 (Sloan), 190 (Loughlin), 191 (Shrewsberry), 192 (Director Defendants).

## **6. Late-Filed Federal Court Derivative Actions**

38. Well after the Court consolidated the first nine related shareholder derivative actions, appointed lead plaintiffs, and issued its Demand Futility Order and 12(b)(6) Order, a second wave of three late-filed complaints came before this Court. In each instance, the Court resolved potential conflicts by ensuring that Co-Lead Plaintiffs would continue to represent the Company's interests on behalf of all shareholders and to ensure resolution of all derivative claims relating to the Improper Sales Practices.

### **a. The *Hannon II* Action**

39. On December 20, 2017, plaintiff George Hannon filed, in *Hannon v. Loughlin*, No. 3:17-cv-07236-JST (N.D. Cal.) ("*Hannon I*"), a shareholder derivative complaint that was nearly identical to the one he filed a year earlier. As noted above, the Court consolidated Mr. Hannon's first related action into this Action on December 12, 2016. *See* Dkt. 39. Mr. Hannon's new complaint added two California causes of action against American Express Company ("American Express"). After the Court granted Co-Lead Plaintiffs' administrative motion to relate *Hannon II*, *see* Dkt. 197, Co-Lead Plaintiffs moved to consolidate *Hannon II* with this Action on the grounds that the legal and factual issues in *Hannon II* were overwhelmingly the same as those in this Action, despite Mr. Hannon's claims against American Express. Dkt. 204.

40. After a hearing on Co-Lead Plaintiffs' motion to consolidate, on May 2, 2018, the Court granted Co-Lead Counsel's motion and consolidated *Hannon II* with this Action after concluding that "there is good reason to believe that [Mr. Hannon's] counsel's dominant purpose in adding claims against American Express was simply to escape the Court's prior order of consolidation." Dkt. 219 at 2.

41. On June 1, 2018, Mr. Hannon sought interlocutory review of the Court's consolidation order. *See* Dkt. 226; *Hannon v. Am. Express Co.*, No. 18-16115 (9th Cir.). At the appellate court's request, Mr. Hannon and Co-Lead Plaintiffs filed preliminary briefing, in July

1 and August 2018, on whether the court lacked jurisdiction over the appeal. *See Hannon II*, Dkts.  
2 5, 7, 8.

3 42. On December 18, 2018, a three-judge motions panel declined to rule on whether  
4 the court had jurisdiction and ordered the parties to further brief the issue for the merits panel.  
5 *Hannon II*, Dkt. 9. The court then set a briefing schedule for the appeal, with Mr. Hannon's  
6 opening brief due on January 29, 2019. *Id.* After two requests for extensions, Mr. Hannon's  
7 deadline was extended to April 29, 2019. *See Hannon II*, Dkts. 10–13.

8 43. On April 29, 2019, the parties filed a stipulation of voluntary dismissal under Rule  
9 42(b) of the Federal Rules of Appellate Procedure, *see Hannon II*, Dkt. 14, and on May 8, 2019,  
10 the court granted the stipulation and closed the case, *see Hannon II*, Dkt. 15. Mr. Hannon never  
11 filed a substantive merits brief addressing consolidation.

12 **b. The *Feuer* Action**

13 44. On May 16, 2018, plaintiff R.A. Feuer filed a shareholder derivative complaint  
14 captioned *Feuer v. Baker*, No. 3:18-cv-02866-JST (N.D. Cal.) (the “*Feuer* Action”). The *Feuer*  
15 complaint was broad in scope—it asserted claims relating to both the Improper Sales Practices  
16 and other unrelated misconduct, including the forced placement of collateral protection insurance.  
17 Unlike in this Action wherein Co-Lead Plaintiffs alleged that demand on the Board was futile,  
18 Mr. Feuer alleged that he made two pre-suit demands on the Board, but that both demands were  
19 wrongfully refused.

20 45. On June 13, 2018, on Co-Lead Plaintiffs' motion, Dkt. 228, the Court entered an  
21 order relating the *Feuer* Action to this Action. Dkt. 230.

22 46. Given the broad scope of the claims in the *Feuer* Action, Co-Lead Plaintiffs  
23 sought an agreement between the parties in both actions regarding the extent to which the claims  
24 in the *Feuer* Action overlapped with those asserted by Co-Lead Plaintiffs in this Action. On  
25 September 6, 2018, the parties, including Mr. Feuer, filed a stipulation and proposed order  
26 providing that (i) the *Feuer* complaint cannot be construed to assert claims based on the Improper  
27 Sales Practices, and (ii) Mr. Feuer cannot assert claims for any relief involving the Improper Sales  
28 Practices. Dkt. 251. On September 7, 2018, the Court granted the stipulation. Dkt. 252. The

1 *Feuer* Action remains before this Court, and two motions to dismiss Mr. Feuer’s claims, which do  
2 not concern the Improper Sales Practices, are pending. *See Feuer* Action, Dkts. 54, 55.

3 **c. The *Himstreet* Action**

4 47. On May 17, 2018, plaintiff Timothy Himstreet filed a derivative complaint relating  
5 to the Improper Sales Practices, in *Himstreet v. Sloan*, No. 3:18-cv-02922-JST (N.D. Cal.).

6 48. On August 2, 2018, in response to a *sua sponte* judicial referral, the Court entered  
7 an order relating the *Himstreet* Action to this Action. Dkt. 243.

8 49. On August 9, 2018, the Court granted a stipulation of the parties to the *Himstreet*  
9 Action to voluntarily dismiss that action without prejudice. *Himstreet*, Dkt. 29.

10 **7. Co-Lead Plaintiffs’ Efforts to Stay or Dismiss Related State Court**  
11 **Derivative Actions**

12 50. Following issuance of the favorable Demand Futility Order and the 12(b)(6)  
13 Order, Co-Lead Plaintiffs sought to avoid unnecessary and duplicative efforts across the several  
14 related derivative actions pending nationwide, and to prevent inconsistent outcomes in those  
15 proceedings. Accordingly, Co-Lead Plaintiffs undertook a comprehensive nationwide effort to  
16 coordinate five related actions pending in California and Delaware state courts in order to  
17 preserve Wells Fargo’s claims in this Action.

18 51. As a result of Co-Lead Plaintiffs’ efforts, every related state court derivative action  
19 was dismissed or stayed pending the resolution of this Action. These efforts, which spanned over  
20 fourteen months, required submission of at least thirteen briefs on behalf of Co-Lead Plaintiffs, as  
21 well as attendance (and argument) in at least seventeen hearings. A brief description of each  
22 action, including Co-Lead Plaintiffs’ efforts, follows.

23 **a. The California State Derivative Action**

24 52. Beginning on September 21, 2016, several plaintiffs filed shareholder derivative  
25 actions in the Superior Court of California, County of San Francisco (the “San Francisco Superior  
26 Court”), against certain defendants and Wells Fargo, as nominal defendant, alleging breach of  
27 fiduciary duty and various other claims related to Improper Sales Practices.



1           53.     On November 22, 2016, the San Francisco Superior Court consolidated a number  
2 of related actions under the caption *In re Wells Fargo & Co. Derivative Litigation*, No. CGC  
3 16-554407 (S.F. Super.) (the “California State Derivative Action”). Pursuant to an agreement of  
4 the parties, the court also appointed the law firm Cotchett, Pitre & McCarthy, LLP as lead counsel  
5 in the California State Derivative Action.<sup>4</sup>

6           54.     On May 10, 2017, six days after this Court issued its Demand Futility Order,  
7 Judge Curtis E.A. Karnow of the San Francisco Superior Court sustained defendants’ demurrers  
8 with leave to amend, for failure to sufficiently allege demand futility.<sup>5</sup>

9           55.     On May 26, 2017, Co-Lead Plaintiffs moved to intervene in and stay the California  
10 State Derivative Action.<sup>6</sup> Among other reasons, Co-Lead Plaintiffs argued that their intervention  
11 was appropriate because they had an interest in the outcome of the California State Derivative  
12 Action as shareholders asserting claims that were substantially, if not entirely, encompassed in  
13 this Action. Moreover, Co-Lead Plaintiffs argued that disposition of the California State  
14 Derivative Action “may as a practical matter impair or impede” their ability to protect Wells  
15 Fargo’s interests in this Action, particularly given this Court’s Demand Futility Order.<sup>7</sup> Co-Lead  
16 Plaintiffs also asserted that their interests could not be adequately represented by the parties in the  
17 California State Derivative Action. On June 26, 2017, lead plaintiffs in the California State  
18 Derivative Action filed an opposition to Co-Lead Plaintiffs’ motion to intervene and stay.<sup>8</sup> On  
19 June 30, 2017, Co-Lead Plaintiffs filed a reply.<sup>9</sup>

20           56.     On July 10, 2017, Judge Karnow held a hearing on Co-Lead Plaintiffs’ motion,  
21 and indicated his intention to grant Co-Lead Plaintiffs’ motion, finding that “[Co-Lead Plaintiffs’]

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22 <sup>4</sup> Order re Joint Stipulation Relating & Consolidating Actions & re Defs.’ Response to Compl. &  
23 Appointing Lead Counsel, California State Derivative Action (Nov. 22, 2016).

24 <sup>5</sup> Order Sustaining Dems. in Part with Leave to Amend & in Part without Leave to Amend &  
25 Setting Case Mgmt. Conf., California State Derivative Action (May 10, 2017).

26 <sup>6</sup> Mot. to Intervene & to Stay This Case in Favor of the Federal Derivative Action, California  
27 State Derivative Action (May 26, 2017).

28 <sup>7</sup> *Id.* at 9.

<sup>8</sup> Pls.’ Opp’n to Federal Pls.’ Mot. for Leave to Intervene & to Stay This Case in Favor of the  
Federal Derivative Action, California State Derivative Action (June 26, 2017).

<sup>9</sup> Reply in Further Support of Mot. for Leave to Intervene & to Stay This Case in Favor of the  
Federal Derivative Action, California State Derivative Action (June 30, 2017).

1 interests could be severely impacted by the proceedings in this court.”<sup>10</sup> And on July 28, 2017,  
2 the San Francisco Superior Court permitted intervention by Co-Lead Plaintiffs and entered a  
3 general stay of the California State Derivative Action, which would be revisited at a subsequent  
4 case management conference.<sup>11</sup>

5 57. On October 13, 2017, the San Francisco Superior Court held a further case  
6 management conference in the California State Derivative Action to hear the parties’ respective  
7 positions on continuing the stay of that case following this Court’s 12(b)(6) Order. On October  
8 20, 2017, the San Francisco Superior Court issued an order finding that the California State  
9 Derivative Action “apparently has claims not currently in the federal case [*i.e.*, this Action], that  
10 is, certain insider trading matters, certain defendants, and certain time period for claims, are in the  
11 state but not the federal matter.”<sup>12</sup> Furthermore, the court’s “tentative conclusion [was] that  
12 proceeding on parts of the state case is appropriate,” and it asked the parties to “confer on an  
13 appropriate means to in effect sever the unique state claims and allow them to proceed here [*i.e.*,  
14 before the San Francisco Superior Court], and report the results to the [San Francisco Superior  
15 Court] in the next joint CMC statement.”<sup>13</sup>

16 58. The San Francisco Superior Court heard the parties’ respective positions at the  
17 subsequent case management conference, held on November 30, 2017. That same day, the San  
18 Francisco Superior Court entered a partial stay of that case, staying those portions of the claims  
19 that overlapped with claims asserted in this Action.<sup>14</sup> Specifically, the court stayed the California  
20 State Derivative Action with limited exceptions: (i) the state plaintiffs’ fourth cause of action for  
21 breach of fiduciary duty for insider selling and misappropriation of information, and (ii) other  
22 causes of action to the extent they accrued during the time period preceding the Relevant Period  
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24 <sup>10</sup> Order re Mot. for Leave to Intervene & for a Stay, California State Derivative Action (July 10,  
25 2017).

26 <sup>11</sup> Order Granting Mot. for Leave to Intervene & for a Stay, California State Derivative Action  
(July 28, 2017).

27 <sup>12</sup> Case Mgmt. Order No. 3 at 1, California State Derivative Action (Oct. 20, 2017), at 1–2.

28 <sup>13</sup> *Id.* at 2.

<sup>14</sup> Case Mgmt. Order No. 4 & Order on Stay, California State Derivative Action (Nov. 30, 2017).

1 in this action (*i.e.*, alleged misconduct prior to 2011) and relate to damages incurred during the  
2 period prior to 2011.

3 59. Pursuant to further scheduling, the parties in the California State Derivative Action  
4 briefed a second round of demurrers on plaintiffs' amended complaint. On April 6, 2018, Co-  
5 Lead Plaintiffs filed a response regarding the demurrers, noting that "[t]o the extent the Court  
6 otherwise examines the broadly alleged breaches of duty of loyalty in the Amended Complaint,  
7 its ruling may implicate and potentially adversely impact findings already made in the Federal  
8 Action [*i.e.*, this Action]."<sup>15</sup> Co-Lead Plaintiffs therefore asked that should the San Francisco  
9 Superior Court make an adverse determination as to demand futility, it explicitly limit such a  
10 determination to the non-stayed causes of action only.<sup>16</sup>

11 60. The San Francisco Superior Court held a hearing on April 17, 2018. On April 25,  
12 2018, the court indicated it was inclined to sustain the demurrer finding that plaintiffs had again  
13 failed to plead demand futility as to the non-stayed causes of action. The court also noted that "it  
14 may not be in the best interests of Wells Fargo . . . to proceed now with the claims remaining,"  
15 and ordered further briefing as to whether it should impose a general stay of the case.<sup>17</sup>

16 61. On May 9, 2018, Co-Lead Plaintiffs filed briefing in support of a general stay.  
17 Consistent with its prior motion, Co-Lead Plaintiffs argued (i) that neither Wells Fargo nor any  
18 other party to the state court proceedings would derive any benefit from continued litigation of  
19 non-overlapping claims, (ii) that allowing the state court plaintiffs to amend their pleadings again  
20 would result in additional wasted resources, and (iii) that the state court proceedings continued to  
21 pose an unintended but existential threat to the outcome of this Action.<sup>18</sup> That same day, lead  
22 plaintiffs in the California State Derivative Action filed a supplemental brief proposing that the  
23 San Francisco Superior Court take one of two paths—*i.e.*, (i) lift the stay and allow the parties to

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24 <sup>15</sup> Response by Federal Intervenor re Defs.' Demurrers at 4, California State Derivative Action  
25 (Apr. 6, 2018).

26 <sup>16</sup> *Id.*

27 <sup>17</sup> Order on Demurrer & Request for Further Briefing, *Wells Fargo Derivative Cases*, No. CJC-  
18-004966 (Apr. 25, 2018).

28 <sup>18</sup> Federal Intervenor's Supplemental Submission in Support of General Stay, *Wells Fargo*  
*Derivative Cases* (May 9, 2018).

1 move forward on all claims, or (ii) reconsider the existing demurrers by following this Court's  
2 Demand Futility Order and 12(b)(6) Order.<sup>19</sup>

3 62. Also on May 9, 2018, Wells Fargo and defendants in the California State  
4 Derivative Action filed a supplemental brief, in which they indicated that, while they believed a  
5 dismissal of that action was most appropriate, they "remain[ed] amenable to a general stay of all  
6 claims in [the California State Derivative Action]."<sup>20</sup>

7 63. On May 14, 2018, the San Francisco Superior Court agreed with Co-Lead  
8 Plaintiffs and entered a complete stay. It concluded that "a full stay is best now to preserve the  
9 derivative claims" and stayed the California State Derivative Action in its entirety.<sup>21</sup> On June 12,  
10 2018, lead plaintiffs in the California State Derivative Action filed a writ petition with the  
11 California Court of Appeal on the stay order. On June 21, 2018, the writ petition was summarily  
12 denied.

13 64. On June 14, 2019, lead plaintiffs in the California State Derivative Action filed a  
14 renewed motion for preliminary approval of a proposed settlement. That motion is pending  
15 before the San Francisco Superior Court.

16 **b. The Herron Action**

17 65. On January 30, 2018, after the partial stay had been entered in the California State  
18 Derivative Action, plaintiff Joan Herron filed a shareholder derivative action in San Mateo  
19 Superior Court, captioned *Herron v. Stumpf*, No. 18-civ-00466 (San Mateo Super.) (the "*Herron*  
20 *Action*"), against certain defendants and Wells Fargo, as nominal defendant, alleging breach of  
21 fiduciary duty, violation of Section 25402 of the California Corporations Code, and breach of the  
22 duty of loyalty related to Improper Sales Practices. Unlike this Action and the California State  
23 Derivative Action, Ms. Herron alleged that she made a pre-suit demand on the Board and that the  
24 Board wrongfully refused her demand.

25  
26 <sup>19</sup> Pls.' Supplemental Br. Pursuant to the Court's Apr. 25, 2018 Order, *Wells Fargo Derivative Cases* (May 9, 2018).

27 <sup>20</sup> Defs.' Supplemental Br. Concerning Implementation of the Court's Apr. 25, 2018 Order on  
Demurrer, *Wells Fargo Derivative Cases* (May 9, 2018).

28 <sup>21</sup> Order Imposing General Stay, *Wells Fargo Derivative Cases* (May 14, 2018).

1           66.     On February 23, 2018, the Chair of the Judicial Council of California issued an  
2 order authorizing the San Francisco Superior Court to determine whether the actions should be  
3 coordinated. On April 12, 2018, the San Francisco Superior Court granted the petition for  
4 coordination and coordinated the actions under the caption *Wells Fargo Derivative Cases*, No.  
5 CJC-18-004966 (S.F. Super.).

6           67.     For the same reasons they had sought to stay the California State Derivative  
7 Action, Co-Lead Plaintiffs sought to stay the *Herron* Action. On May 24, 2018, the San  
8 Francisco Superior Court entered an order granting a stipulation between Co-Lead Plaintiffs and  
9 the parties to the *Herron* Action to allow Co-Lead Plaintiffs to intervene in the *Herron* Action for  
10 the limited purpose of seeking a stay of that case.<sup>22</sup>

11           68.     On May 25, 2018, Co-Lead Plaintiffs filed a motion to stay the *Herron* Action.  
12 Co-Lead Plaintiffs argued that as with the California State Derivative Action, the *Herron* Action  
13 should be stayed in its entirety because (i) the *Herron* Action is duplicative of and less  
14 comprehensive than this Action, and (ii) proceeding in the *Herron* Action would waste party  
15 resources and potentially give rise to conflicting rulings.<sup>23</sup> On June 11, 2018, Ms. Herron filed an  
16 opposition to Co-Lead Plaintiffs' motion.<sup>24</sup> On June 22, 2018, Co-Lead Plaintiffs filed a reply.<sup>25</sup>

17           69.     On July 11, 2018, Judge Karnow heard argument on the motion to intervene and  
18 thereafter stayed the *Herron* Action in its entirety pending resolution of this Action.<sup>26</sup>

19           70.     On June 14, 2019, lead plaintiffs in the California State Derivative Action  
20 concurrently filed in the *Herron* Action a renewed motion for preliminary approval of a proposed  
21 settlement. That motion, as noted above, is pending before the San Francisco Superior Court.

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24 <sup>22</sup> Stipulation & Order Granting Federal Pls.' Intervention for Purposes of Seeking a Stay of the  
*Herron* Action, *Wells Fargo Derivative Cases* (May 24, 2018).

25 <sup>23</sup> Mot. by Federal Intervenors to Stay the *Herron* Action in Favor of the Federal Derivative  
Action, *Wells Fargo Derivative Cases* (May 25, 2018).

26 <sup>24</sup> Pl. Herron's Opp'n to Mot. by Federal Intervenors to Stay *Herron* Action, *Wells Fargo*  
*Derivative Cases* (June 11, 2018).

27 <sup>25</sup> Federal Intervenors' Reply in further Support of Mot. to Stay the *Herron* Action in Favor of the  
Federal Derivative Action, *Wells Fargo Derivative Cases* (June 22, 2018).

28 <sup>26</sup> Order Granting Mot. to Stay *Herron* Action, *Wells Fargo Derivative Cases* (July 11, 2018).

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1 Co-Lead Counsel retained the law firm of Prickett, Jones & Elliott, P.A. (“Prickett Jones”), a  
2 Delaware firm, to assist with the Delaware proceedings, including filing the motions to intervene  
3 and stay. In their motion to intervene, Co-Lead Plaintiffs argued, *inter alia*, that (i) the *Rosenfeld*  
4 Action was both duplicative of and narrower than this Action; (ii) disposition of the *Rosenfeld*  
5 Action might, as a practical matter, impair Co-Lead Plaintiffs’ ability to protect their claims on  
6 behalf of the Company in this Action; and (iii) Co-Lead Plaintiffs’ interests could not be  
7 adequately represented by the existing parties to the *Rosenfeld* Action.<sup>28</sup> In moving to stay the  
8 *Rosenfeld* Action, Co-Lead Plaintiffs argued that an unfavorable ruling in the *Rosenfeld* Action  
9 could generate conflicts with the proceedings in this Action, and that further litigation of the  
10 *Rosenfeld* Action was duplicative and offered no meaningful benefit to the Company. In  
11 addition, Co-Lead Plaintiffs argued that, notwithstanding that Mr. Rosenfeld had pled demand  
12 *refusal* instead of demand *futility*, Defendants might still seek to use a dismissal of the *Rosenfeld*  
13 Action as a basis to assert issue preclusion in this Action.<sup>29</sup>

14 76. On May 11, 2018, the Delaware Chancery Court granted a stipulation by the  
15 parties, including Co-Lead Plaintiffs and Mr. Rosenfeld, dismissing the *Rosenfeld* Action with  
16 prejudice only as to Mr. Rosenfeld.

17 **f. The Connecticut Laborers Action**

18 77. On May 17, 2017, plaintiff Connecticut Laborers Pension and Annuity Funds  
19 (“Connecticut Laborers”) filed a shareholder derivative action in Delaware Chancery Court,  
20 captioned *Connecticut Laborers Pension & Annuity Funds v. Stumpf*, C.A. No. 2017-0380-SG  
21 (Del. Ch.) (the “*Connecticut Laborers* Action”), against certain defendants and Wells Fargo, as  
22 nominal defendant, alleging breach of fiduciary duty related to Improper Sales Practices.  
23 Connecticut Laborers filed an amended complaint on December 18, 2017.

24 78. In addition to claims relating to Improper Sales Practices, the amended complaint  
25 in the *Connecticut Laborers* Action also alleged that certain defendants violated their duties to the

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26 *Footnote continued from previous page*  
27 2018).

28 <sup>28</sup> Mot. to Intervene, *Rosenfeld* Action (Jan. 12, 2018).

<sup>29</sup> Mot. to Stay, *Rosenfeld* Action (Jan. 12, 2018).

1 Company concerning the provision of collateral protection insurance, overcharges to auto loan  
2 customers for Guaranteed Asset Protection insurance, charges to customers related to mortgage  
3 interest rates and so-called “rate-locks,” violations of the Servicemembers Civil Relief Act, 50  
4 U.S.C. App. § 3901 *et seq.*, and the fees charged to customers by the Company’s foreign  
5 exchange unit.

6 79. While Co-Lead Plaintiffs’ motions to intervene in and stay the *Rosenfeld Action*  
7 were pending, *see above*, Co-Lead Plaintiffs, Mr. Rosenfeld, and Connecticut Laborers conferred  
8 and agreed that, in order to conserve party and judicial resources and in light of the advanced  
9 nature of this Action, the *Rosenfeld Action* should be voluntarily dismissed and the *Connecticut*  
10 *Laborers Action* should be stayed. On February 21, 2018, counsel for Connecticut Laborers sent  
11 all parties proposed stipulations to that effect. After considering the stipulations for several  
12 weeks, defendants in the Delaware Chancery Court proceedings ultimately took the position that  
13 they would not agree to either a stay of the *Connecticut Laborers Action* or a dismissal of the  
14 *Rosenfeld Action*, and would actively oppose such relief. Defendants’ position contrasted with  
15 their prior position in January 2018 when, pursuant to Court of Chancery Rules 23.1 and 12(b)(6),  
16 they moved the court for an order to dismiss the *Connecticut Laborers Action*.<sup>30</sup>

17 80. In light of the defendants’ opposition to a proposed stay, Vice Chancellor  
18 Glasscock held a telephonic conference in the *Connecticut Laborers Action* on March 16, 2018.  
19 Attorneys from Prickett Jones joined Co-Lead Counsel on that telephonic conference.

20 81. During that conference, defendants (who include Wells Fargo and all of the  
21 Defendants in this Action, except Defendants Shrewsberry and Loughlin) reiterated their  
22 opposition without providing justification for refusing to stipulate to a stay. The parties stipulated  
23 to Co-Lead Plaintiffs’ intervention for the purpose of filing a motion to stay the *Connecticut*  
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25 <sup>30</sup> Def. John G. Stumpf’s Mot. to Dismiss Pls.’ Verified Am. Derivative Compl., *Connecticut*  
26 *Laborers Action* (Jan. 3, 2018); Wells Fargo & Co.’s Mot. to Dismiss Pls.’ Verified Am.  
27 Derivative Compl., *Connecticut Laborers Action* (Jan. 3, 2018). Def. Carrie Tolstedt’s Mot. to  
28 Dismiss Verified Am. Derivative Compl., *Connecticut Laborers Action* (Jan. 3, 2018). Director  
Defendants’ Mot. to Dismiss Verified Am. Derivative Compl., *Connecticut Laborers Action* (Jan.  
3, 2018). Def. Timothy J. Sloan’s Mot. to Dismiss Verified Am. Derivative Compl., *Connecticut*  
*Laborers Action* (Jan. 3, 2018).



1 *Laborers* Action. A hearing on Co-Lead Plaintiffs’ and Connecticut Laborers’ motions to stay  
2 was set for June 12, 2018 before Vice Chancellor Glasscock.

3 82. On April 6, 2018, Co-Lead Plaintiffs and Connecticut Laborers separately filed  
4 motions to stay the *Connecticut Laborers* Action.<sup>31</sup> Co-Lead Plaintiffs argued, *inter alia*, that an  
5 unfavorable ruling in the *Connecticut Laborers* Action could generate conflicts with the  
6 proceedings in this Action, and that further litigation of the *Connecticut Laborers* Action was  
7 duplicative and offered no meaningful benefit to the Company. Prickett Jones assisted Co-Lead  
8 Counsel in the filing of the motion to stay.

9 83. On May 10, 2018, defendants filed a brief in opposition to Co-Lead Plaintiffs’  
10 motion to stay the *Connecticut Laborers* Action. In their brief, defendants specifically requested  
11 that the Delaware Chancery Court issue a decision contrary to this Court’s prior Demand Futility  
12 Order and 12(b)(6) Order, with the apparent intention of depriving this Court of jurisdiction over  
13 Co-Lead Plaintiffs’ claims.<sup>32</sup> Defendants cited “ongoing confusion” and “diverging decisions”  
14 between this Action and the California State Derivative Action, though to the extent that  
15 argument had any merit at the outset (Co-Lead Plaintiffs maintained it did not), it was seriously  
16 undermined, or obviated entirely, just four days later when the San Francisco Superior Court  
17 stayed the California State Derivative Action *in its entirety* in deference to this Action.  
18 Defendants, though, sought from the Delaware Chancery Court a preclusive and final  
19 “authoritative ruling on the demand futility issue,” plainly seeking to undue this Court’s well-  
20 considered decision.<sup>33</sup> On May 17, 2018, Co-Lead Plaintiffs filed a notice in this Action,  
21 apprising this Court of the positions taken by Wells Fargo and the defendants in the *Connecticut*  
22 *Laborers* Action. Dkt. 223.

23 84. On May 17, 2018, Co-Lead Plaintiffs filed a reply in further support of their  
24 motion.<sup>34</sup> Principally, Co-Lead Plaintiffs explained that (i) the decisions issued by this Court and

25 <sup>31</sup> Federal Pls.’ Mot. to Stay, *Connecticut Laborers* Action (Apr. 6, 2018); Mot. to Stay,  
26 *Connecticut Laborers* Action (Apr. 6, 2018).

27 <sup>32</sup> Defs.’ Opp’n to Federal Plaintiffs’ Mot. to Stay Delaware Proceedings, *Connecticut Laborers*  
28 *Action* (May 10, 2018).

<sup>33</sup> *Id.* at 6 (emphasis added).

<sup>34</sup> Reply Br. in Further Support of Mot. to Stay, *Connecticut Laborers* Action (May 17, 2018).

1 the San Francisco Superior Court were *not* conflicting because the San Francisco Superior Court  
2 had made no final rulings on demand futility in the California State Derivative Action; (ii) the  
3 San Francisco Superior Court stayed the entire California State Derivative Action specifically to  
4 *avoid* any potential future conflicts; and (iii) defendants offered no basis for questioning this  
5 Court's capacity to render prompt and complete justice.

6 85. On June 12, 2018, after a hearing on the matter, the Delaware Chancery Court  
7 stayed the *Connecticut Laborers* Action in its entirety pending resolution of this Action.<sup>35</sup> An  
8 attorney from Prickett Jones argued the motion on behalf of Co-Lead Plaintiffs.

9 86. Prickett Jones continues to act on behalf of Co-Lead Plaintiffs and Co-Lead  
10 Counsel in the Delaware proceedings.

11 **B. Negotiations Regarding Initial Discovery and Scheduling**

12 87. The Parties exchanged initial disclosures in this Action pursuant to Rule 26(f) on  
13 December 20, 2017.

14 88. On January 10, 2018, the Court held a case management conference, Dkt. 194, and  
15 on January 24, 2018, it issued a Scheduling Order setting forth significant case deadlines going  
16 forward. Notably, the Court scheduled (i) a document discovery cut-off (*i.e.*, substantial  
17 completion) date of September 14, 2018; (ii) an expert discovery deadline of May 10, 2019; (iii)  
18 an August 30, 2019 deadline for briefing of dispositive motions; and (iv) a trial date of December  
19 2, 2019. Dkt. 199.

20 89. In addition, following the 12(b)(6) Order, the Parties began negotiating both a  
21 stipulated Protective Order and a stipulated ESI Protocol to govern discovery going forward.  
22 After several rounds of proposals, the Parties reached agreement and filed both stipulations and  
23 proposed orders on February 28, 2018. *See* Dkts. 205, 206.

24 90. On March 7, 2018, the Court granted the Parties' stipulated Protective Order and  
25 stipulated ESI Protocol. Dkts. 210, 211.

26  
27  
28 <sup>35</sup> Order to Stay Proceedings, *Connecticut Laborers* Action (July 11, 2018).

1           **C.     Co-Lead Plaintiffs' Discovery Efforts**

2           91.     For over a year, Co-Lead Plaintiffs pursued discovery from Wells Fargo,  
3 Defendants, and several third-parties. The Parties agreed to and operated under an expedited case  
4 schedule providing for substantial completion of document production by September 14, 2018,  
5 less than nine months after the Court entered its Scheduling Order on January 24, 2018. *See* Dkt.  
6 199.

7           92.     In total, Co-Lead Plaintiffs served 204 document requests on Wells Fargo,  
8 Defendants, and certain third-parties. Co-Lead Plaintiffs received 727,679 documents from  
9 Defendants and seven third-parties, comprising 3,529,385 pages.

10          93.     As of December 12, 2018, when the Parties accepted the Mediators' proposal,  
11 Plaintiffs' Counsel had reviewed over 1.1 million pages of documents produced in this Action, as  
12 well as tens of thousands of pages of documents from other civil and regulatory proceedings,  
13 public reports, press coverage, and congressional testimony related to the Improper Sales  
14 Practices. Plaintiffs' Counsel ceased document review and analysis, and all other discovery  
15 work, following the Parties' acceptance of the Mediator's proposal.

16          94.     Co-Lead Plaintiffs also retained several experts, consultants, and investigatory  
17 firms to obtain additional information and to perform an evaluation of their claims as the Action  
18 progressed. This work covered a wide range of topics, including corporate governance,  
19 regulatory matters, insurance coverage, and damages.

20          95.     Co-Lead Counsel's discovery efforts provided Co-Lead Plaintiffs with a thorough  
21 understanding of the strengths and weaknesses of their claims, and assisted Co-Lead Counsel in  
22 considering and evaluating whether the proposed Settlement was fair, reasonable, and adequate.

23          96.     A detailed summary of Co-Lead Counsel's discovery efforts follows.

24                 **1.     Discovery from Wells Fargo**

25          97.     Formal document discovery in the Action commenced on November 3, 2017,  
26 when Co-Lead Plaintiffs served Wells Fargo with their first set of document requests. Broadly  
27 speaking, these document requests—comprising 63 individual requests—sought information  
28 concerning (i) the scope of the Improper Sales Practices; (ii) investigations and litigations relating

1 to the Improper Sales Practices; (iii) the Company's internal investigations; (iv) Defendants'  
2 contemporary awareness of the Improper Sales Practices; (v) statements made to investors,  
3 financial analysts, and the SEC; (vi) employee complaints and litigation regarding the Improper  
4 Sales Practices; (vii) the termination of over 5,300 Wells Fargo employees in connection with the  
5 Improper Sales Practices; (viii) the Board's authorization of repurchases of Wells Fargo stock;  
6 (ix) Wells Fargo's Sales Integrity Task Force; (x) the Company's corporate structure; (xi) the  
7 Company's policies, including those relating to employment practices, its Code of Ethics and  
8 Business Conduct, corporate governance, internal controls, risk management, and internal  
9 auditing; (xii) Defendants' transactions in Wells Fargo securities; (xiii) reelection, compensation,  
10 and terminations or other departures of Board members; (xiv) the Company's remedial efforts  
11 with respect to the Improper Sales Practices; and (xv) potential damages.

12 98. On December 15, 2017, Wells Fargo served its responses and objections to Co-  
13 Lead Plaintiffs' first set of document requests.

14 99. Co-Lead Counsel and Wells Fargo met and conferred, beginning on January 11,  
15 2018 and for a period of several months, to address the Parties' disagreements regarding the  
16 scope of discovery and proposed search terms to be applied to identify responsive documents. As  
17 of July 2, 2018, Co-Lead Plaintiffs and Wells Fargo had agreed upon a comprehensive  
18 preliminary search protocol (including more than 50 custodians and hundreds of search terms),  
19 subject to potential further meet-and-confer discussions based on information produced in  
20 discovery. *See* Dkt. 234. Pursuant to that preliminary agreement, Wells Fargo would produce  
21 responsive documents dated through October 2016. Wells Fargo continued to maintain  
22 objections to producing documents post-dating October 2016.

23 100. On March 12, 2018, Co-Lead Plaintiffs served Wells Fargo with their second set  
24 of document requests. This second set of five individual document requests sought information  
25 concerning the Federal Reserve Board's investigation into the Improper Sales Practices, and the  
26 Order to Cease and Desist Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as  
27 Amended, *In the Matter of Wells Fargo & Company San Francisco, California*, Docket No. 18-  
28

007-B-HC, dated February 2, 2018, issued by the Federal Reserve Board (the “Federal Reserve Consent Order”).

101. On April 11, 2018, Wells Fargo served Co-Lead Plaintiffs with its responses and objections to their second set of document requests.

102. By July 9, 2018, Wells Fargo had produced approximately 135,000 pages of documents in response to Co-Lead Plaintiffs’ document requests. *See* Dkt. 234 at 8. By August 7, 2018, Wells Fargo had produced approximately 255,000 pages of documents. *See* Dkt. 244 at 2.

103. Wells Fargo informed Co-Lead Plaintiffs that it substantially completed its production of documents as of September 14, 2018.

104. As described in the Parties’ October 9, 2018 joint case management statement, Wells Fargo to that point had produced over 164,000 documents, consisting of more than 688,000 pages. Wells Fargo further indicated that it had completed its production of documents identified through application of the preliminary search protocol. *See* Dkt. 255 at 5–6. However, the Parties anticipated additional document production, and stipulated to a modified case schedule, whereby the document discovery cut-off date would be extended until January 11, 2019. *See id.* at 11.

105. At a subsequent case management conference on October 17, 2018, the Court adopted the Parties’ stipulated request and extended the document discovery cutoff date to January 11, 2019. Dkt. 260.

106. After a further meet and confer, Wells Fargo agreed to produce to Co-Lead Plaintiffs an additional set of more than 520,000 responsive documents, comprising over 2.5 million pages, which Wells Fargo completed in four document productions in November 2018.

## **2. Discovery from Defendants**

107. On May 9, 2018, Co-Lead Plaintiffs served the Officer Defendants and the Director Defendants with separate sets of document requests. The document requests to the Officer Defendants and Director Defendants each consisted of 68 substantially similar requests, and, broadly speaking, sought information similar to that sought from Wells Fargo. On June 8,

1 2018, the Director Defendants served Co-Lead Plaintiffs with a single set of their responses and  
2 objections, and each of the Officer Defendants separately served his or her responses and  
3 objections.

4 **a. Director Defendants**

5 108. On June 21, 2018, and July 19, 2018, Co-Lead Plaintiffs and the Director  
6 Defendants met and conferred regarding the Director Defendants' response to Co-Lead Plaintiffs'  
7 document requests. Recognizing the substantial overlap among the document requests, Co-Lead  
8 Plaintiffs modified the preliminary search protocol with Wells Fargo as a starting point for  
9 negotiations with the Director Defendants.

10 109. Following the meet-and-confer process, the Director Defendants made four  
11 productions. In addition, by agreement with Wells Fargo, the Company produced additional  
12 documents relating to the Director Defendants.

13 110. Following the October 17, 2018 case management conference, Co-Lead Plaintiffs  
14 and the Director Defendants exchanged letters and held a telephonic meet-and-confer on  
15 November 1, 2018. The Director Defendants made additional productions of documents on  
16 November 12 and November 30, 2018.

17 **b. Officer Defendants**

18 111. On July 6, 2018, Co-Lead Plaintiffs sent substantially similar letters to each of the  
19 Officer Defendants seeking additional information with regard to their responses and objections  
20 to the document requests. Specifically, Co-Lead Plaintiffs requested, *inter alia*, that the Officer  
21 Defendants confirm that they (i) were continuing to preserve all relevant documents, and (ii) had  
22 conducted certain searches for information through the present day. Co-Lead Plaintiffs also  
23 requested that the Officer Defendants provide additional information about the manner in which  
24 they searched for responsive information. The letters requested dates to set up meet-and-confer  
25 calls to discuss these issues and the Officer Defendants' objections and responses.

26 112. Co-Lead Plaintiffs and the Officer Defendants subsequently engaged in a meet-  
27 and-confer process, after which the Officer Defendants made one production in addition to  
28 documents of theirs that, by agreement, Wells Fargo produced.

1                   **3. Discovery from Third-Parties**

2           113. Co-Lead Plaintiffs served subpoenas to seven third-parties, which collectively  
3 produced 4,458 pages of documents.

4           114. **American Express**. On July 24, 2018, Co-Lead Plaintiffs served a subpoena on  
5 American Express, containing 12 separate requests for information relating to, *inter alia*, (i) the  
6 Improper Sales Practices; and (ii) the agreement, announced on August 7, 2013, whereby Wells  
7 Fargo would issue new credit cards provided by American Express. The parties met and  
8 conferred on August 1, 2018. On August 22, 2018, American Express served its written  
9 responses and objections. On October 25, 2018, American Express made a production in  
10 response to Co-Lead Plaintiffs' subpoena.

11           115. **PwC**. On July 24, 2018, Co-Lead Plaintiffs served a subpoena on  
12 PricewaterhouseCoopers ("PwC"), containing 14 separate requests for information relating to its  
13 retention by Wells Fargo in connection with regulatory investigations and litigations relating to  
14 the Improper Sales Practices. On August 7, 2018, PwC served its responses and objections,  
15 largely refusing to produce documents on grounds of relevance and privilege. On September 24,  
16 2018, Co-Lead Plaintiffs served a written response by letter, and the parties agreed to meet and  
17 confer the following week. On November 21, 2018, Co-Lead Plaintiffs sent a second letter to  
18 PwC requesting production of PwC's retention agreement with Wells Fargo.

19           116. **McKinsey**. On August 6, 2018, Co-Lead Plaintiffs served a subpoena on  
20 McKinsey & Company, Inc. ("McKinsey"), containing 12 separate requests for information  
21 relating to its retention by Wells Fargo's Board to aid its evaluation of the Company's risk  
22 management capabilities. The parties met and conferred on August 17, 2018, and McKinsey  
23 served its written responses and objections on August 24, 2018. Counsel for McKinsey  
24 represented that McKinsey would issue a preservation memorandum for relevant materials, and  
25 begin a process for collecting responsive documents. On November 21, 2018, Co-Lead Plaintiffs  
26 corresponded with McKinsey regarding the progress of McKinsey's document collection.

27           117. **Accenture**. On August 9, 2018, Co-Lead Plaintiffs served a subpoena on  
28 Accenture LLP ("Accenture"), containing 16 separate requests for information relating to its

1 retention by Wells Fargo to assist in an independent review of the Company's approach to sales  
2 practices. On August 30, 2018, Accenture served its written responses and objections, refusing to  
3 produce any documents largely on grounds of privilege. On November 21, 2018, Co-Lead  
4 Plaintiffs sent Accenture a letter requesting production of Accenture's retention agreements with  
5 Wells Fargo or its counsel.

6 118. **FTI.** On August 6, 2018, Co-Lead Plaintiffs served a subpoena on FTI  
7 Consulting, Inc. ("FTI"), containing 17 separate requests for information relating to its retention  
8 by counsel to Wells Fargo's Board in its preparation of the Oversight Committee Report. On  
9 August 20, 2018, FTI served its written responses and objections, refusing to produce any  
10 documents largely on grounds of privilege. On November 21, 2018, Co-Lead Plaintiffs sent FTI  
11 a letter requesting production of FTI's retention agreements with Wells Fargo or its counsel.

12 119. **F.W. Cook.** On August 6, 2018, Co-Lead Plaintiffs served a subpoena on  
13 Frederick W. Cook & Co., Inc. ("F.W. Cook"), containing six separate requests for information  
14 relating to its retention by Wells Fargo regarding executive compensation practices. The parties  
15 met and conferred several times regarding Co-Lead Plaintiffs' requests—on September 27, 2018,  
16 October 5, 2018, and November 6, 2018. In these discussions, counsel for F.W. Cook agreed to  
17 review and produce any responsive non-privileged documents. On November 30, 2018, F.W.  
18 Cook served its written responses and objections, and on December 6, 2018, it produced 60  
19 documents.

20 120. **Mercer.** On September 8, 2018, Co-Lead Plaintiffs served a subpoena on Mercer  
21 Consulting Group, Inc. ("Mercer"), containing 15 separate requests for information relating to its  
22 retention by Wells Fargo regarding the Company's compensation program. On September 26,  
23 2018, Mercer served its written responses and objections, and on October 24, 2018, it produced  
24 documents totaling 325 pages.

#### 25 4. The Federal Reserve

26 121. On June 20, 2018, Co-Lead Plaintiffs made a formal written request to the Federal  
27 Reserve for access to confidential supervisory information in accordance with 12 C.F.R.  
28 § 261.22. Specifically, Co-Lead Plaintiffs sought access to information regarding the Federal



1 Reserve's investigation into Wells Fargo and the Improper Sales Practices, as well as its eventual  
2 February 2, 2018 Consent Order. Co-Lead Plaintiffs identified specific document requests they  
3 had served in this Action, which Wells Fargo and Defendants refused to produce, relying on the  
4 bank examination privilege. On October 23, 2018, counsel for the Federal Reserve served a  
5 written response, requesting additional information with respect to Co-Lead Plaintiffs' request.

6 **D. Co-Lead Plaintiffs' Review and Synthesis of Document Discovery**

7 122. In the course of discovery, Co-Lead Plaintiffs reviewed and analyzed over 332,000  
8 documents produced by Wells Fargo, the Defendants, and third-parties, totaling more than 1.1  
9 million pages. This review and analysis consisted of both an attorney-directed manual review of  
10 individual documents and, later, the use of technology-assisted review ("TAR") software, to  
11 identify documents most likely to be relevant to the central issues in the Action.

12 123. As Wells Fargo made its first productions of documents, beginning in May 2018,  
13 Co-Lead Counsel took steps to maximize the efficiency of its review and analysis. Given the  
14 volume of documents, Co-Lead Counsel ran searches of key terms through the document  
15 productions in order to prioritize review of documents more likely to be responsive to Co-Lead  
16 Plaintiffs' requests. Co-Lead Counsel also prepared a comprehensive document review manual  
17 for use in training and guiding attorneys in their review and analysis. This manual contained,  
18 among other things, background information about the Action, an explanation of key issues and  
19 witnesses, and instructions for document coding. Co-Lead Counsel also developed a set of quick-  
20 reference resources to aid attorneys in their review and analysis, including a "cast of characters"  
21 directory, a list of acronyms and terms, and a document of frequently asked questions regarding  
22 the case and key issues. As document review and analysis continued, Co-Lead Counsel refined  
23 the manual to account for newly produced information and to narrow the focus on particular  
24 issues in preparation for anticipated depositions.

25 124. Starting in July 2018, Co-Lead Counsel commenced a first-level review of  
26 documents produced in this Action. This process required attorneys to carefully review each  
27 document, one-by-one, to assess its relevance to the core issues in the Action, and to input  
28 summary notes regarding documents of interest. This process also required attorneys to perform

1 targeted searches to identify similarly relevant documents, and to share that information with the  
2 larger team. During this phase, and throughout the remainder of discovery, attorneys on the  
3 document review and analysis team met weekly by telephone for, during which attorneys  
4 discussed key documents and collaborated on best practices. The document review and analysis  
5 was conducted by attorneys at Lieff Cabraser, Saxena White, Robbins Arroyo LLP and Glancy  
6 Prongay & Murray LLP. The weekly meetings were led by associates and partners from Lieff  
7 Cabraser and Saxena White, and actively attended by lawyers at all four law firms who, among  
8 other things, presented on documents they had reviewed and analyzed.

9       125. In performing initial review and analysis of documents, attorneys identified “hot”  
10 and “highly relevant” documents, which were deemed particularly relevant to the key issues in  
11 the Action. These selected documents were further subjected to a second-level review by a team  
12 of experienced attorneys, who then synthesized the information and provided specific feedback to  
13 the review and analysis team. The second-level review resulted in a refined set of key documents  
14 that were confirmed to be “hot” or “highly relevant” (*i.e.*, the “seed set”) with respect to the  
15 issues in the case.

16       126. In order to further conserve resources and maximize efficiency, Co-Lead Counsel  
17 configured their document database for TAR in the Continuous Active Learning (“CAL”) mode.  
18 In the TAR-CAL mode, the computer learns from the content of the seed set and is trained to  
19 identify more of the same types of documents from additional unreviewed documents as they are  
20 produced. The computer identifies and feeds new proposed hot or highly relevant documents to a  
21 team of attorneys on a priority basis for further review. These attorneys review and either affirm  
22 or correct the computer’s proposed coding. The computer automatically “digests” the decisions  
23 made by the attorneys and recalibrates its learning process on a continuous basis, hence the term  
24 “Continuous Active Learning.” Through this iterative process between attorneys and artificial  
25 intelligence, Co-Lead Counsel identified key hot and highly relevant documents quickly and on a  
26 priority basis. A total of 109,401 documents produced were subjected to TAR-CAL and, in a few  
27 months, Co-Lead Counsel identified 12,780 of these documents as hot or highly relevant. These  
28 hot or highly relevant documents were then analyzed for deposition preparation.

1           127. Overall, including documents run through the TAR-CAL process, Co-Lead  
2 Counsel reviewed and analyzed over 332,000 documents produced by Wells Fargo and the  
3 Defendants.

4           128. Co-Lead Counsel also began a comprehensive process of preparing for the  
5 depositions of over 40 anticipated fact witnesses, including the 20 named Defendants. This  
6 deposition preparation process required attorneys to, among other things, (i) conduct independent  
7 research on each of the anticipated witnesses, (ii) review and synthesize information contained in  
8 hot and highly relevant documents, (iii) identify key documents for use in depositions, and (iv)  
9 draft detailed outlines with respect to key deposition topics. Attorneys were organized by fact  
10 witness into two- or three-person teams. After review and analysis of the pertinent information,  
11 these attorney teams presented their summaries, outlines, and key documents for further  
12 discussion with managing attorneys on the case. Based on feedback from the managing  
13 attorneys, these attorney teams would then further refine their work product and identify  
14 additional areas of inquiry as well as additional documents for use at deposition.

15           **E. Notable Discovery Disputes**

16           129. In addition to disputes over the completeness of Wells Fargo's and the  
17 Defendants' document productions (*see supra* at ¶¶ 96-110), the Parties engaged on issues  
18 regarding the applicable time period for discovery as well as depositions and case scheduling, as  
19 detailed below.

20           **1. Applicable Time Period for Discovery**

21           130. Over the course of discovery, Wells Fargo and the Defendants refused to produce  
22 documents relevant to events and developments post-dating the Company's September 2016  
23 disclosures relating to the Improper Sales Practices. In general, Wells Fargo agreed to produce  
24 only documents dated through October 2016, and the Director Defendants agreed to produce only  
25 documents dated through September 2016.

26           131. The Parties met and conferred on multiple occasions. Among other things, the  
27 Parties discussed, on September 25 and 28, 2018, a proposal to run searches for the following  
28 limited categories of documents post-dating October 2016: (i) post-September 2016 termination

1 of executives and officers; (ii) corporate governance changes and Board composition; (iii)  
2 internal investigations of sales practices by Wells Fargo's Oversight Committee and the resulting  
3 April 2017 Oversight Committee Report; (iv) the investigation by the Federal Reserve Board and  
4 the resulting February 2018 Federal Reserve Order; and (v) remedial actions and damages  
5 incurred by Wells Fargo. The issue was ultimately briefed in a submission to the Court shortly  
6 before the Settlement was reached.

## 7                   **2.       Depositions and Case Scheduling**

8           132.   Co-Lead Plaintiffs informed the Court that they projected taking at least 40 fact  
9 witness depositions. *See, e.g.*, Dkts. 234 at 8, 244 at 6-7, 255. Wells Fargo and Defendants took  
10 the position that such a large number of depositions would be extremely difficult to complete  
11 within the timeframe provided under the Court's Scheduling Order (Dkt. 199). The Parties  
12 continued to dispute the propriety of and the amount of time required for Co-Lead Plaintiffs'  
13 anticipated depositions, as reflected in their October 9, 2018 joint case management statement.  
14 *See* Dkt. 255 at 12-13, 17.

15           133.   Under the Court's Scheduling Order, the Parties were required to simultaneously  
16 exchange opening and rebuttal expert reports. In the Parties' October 9, 2018 joint case  
17 management statement, Defendants proposed an alternative schedule under which Co-Lead  
18 Plaintiffs would be required to first serve their expert reports, followed by Defendants' expert  
19 reports, and precluding Co-Lead Plaintiffs from rebuttal altogether. *See* Dkt. 255 at 11-12, 14-  
20 15, 17.

21           134.   Both of the disagreements described above had ramifications for the Action going  
22 forward, as reflected in the Parties' divergent proposed case schedules. *See id.* at 11-12.  
23 However, at its October 17, 2018 case management conference, before definitively deciding these  
24 matters, the Court (i) adopted the Parties stipulated request to continue the document discovery  
25 cutoff date to January 11, 2019, and (ii) scheduled a further case management conference for  
26 January 23, 2019. Dkt. 260. In light of the settlement-in-principle reached on December 12,  
27 2018, the Parties did not propose a revised case schedule.

1 **III. SETTLEMENT DISCUSSIONS, MEDIATION, AND NEGOTIATION OF**  
2 **SETTLEMENT DOCUMENTS**

3 135. In a total of seven in-person mediation sessions that commenced in August 2017  
4 and took place in San Francisco and New York City, the Parties and certain insurance companies  
5 that issued directors and officers liability insurance (“Insurers”), engaged in vigorous negotiations  
6 regarding a potential resolution of the Action. At the end of the last full-day mediation session,  
7 on December 4, 2018, these efforts culminated in a Mediators’ proposal, which the Parties and  
8 the Insurers accepted on December 12, 2018.

9 136. The Settlement is the product of arm’s-length negotiations among experienced and  
10 well-informed counsel, and were conducted in the utmost good faith.<sup>36</sup>

11 **A. Mediations with Judge Layn R. Phillips (Ret.)**

12 137. After the Court issued its Demand Futility Order, the Parties agreed to begin  
13 exploring the possibility of resolving the Action. To that end, the Parties engaged retired federal  
14 Judge Layn R. Phillips and Ms. Michelle Yoshida, both of Phillips ADR, to facilitate a series of  
15 settlement negotiations.

16 138. On August 7, 2017, the Parties met in San Francisco, California, for their first  
17 mediation session with Judge Phillips.

18 139. In preparation for that mediation, Judge Phillips requested, and the Parties  
19 exchanged, detailed mediation briefs on July 24, 2017. Co-Lead Plaintiffs submitted a 25-page  
20 mediation brief, detailing the relevant facts and presenting a preliminary analysis of the damages  
21 suffered by the Company as a result of the Improper Sales Practices. Wells Fargo and the  
22 Director Defendants each submitted briefs rebutting Co-Lead Plaintiffs’ claims and contesting  
23 damages to the Company from the Improper Sales Practices. In addition, after reviewing Co-  
24 Lead Plaintiffs’ submission, Judge Phillips sought additional information regarding Co-Lead  
25 Plaintiffs’ claims and their positions with respect to a potential settlement. Co-Lead Plaintiffs  
26 prepared a response, which they shared with Judge Phillips at the mediation.

27 <sup>36</sup> The Parties’ mediation sessions are discussed below for the purpose of describing key events in  
28 this Action, and do not constitute a waiver of any privilege (including the mediation privilege),  
doctrine, law, or rule protecting information from disclosure.

1           140. The Parties negotiated, through Judge Phillips, on August 7, 2017. Specifically,  
2 Co-Lead Plaintiffs shared their positions and conveyed to Judge Phillips their understanding of  
3 the strengths and weaknesses of the claims and defenses in this Action, as well as potential  
4 sources of recovery. The Parties agreed to schedule a subsequent mediation.

5           141. Following the first mediation and in advance of the second mediation, and at the  
6 request of Judge Phillips, Co-Lead Plaintiffs prepared proposals regarding corporate governance  
7 reforms and the forfeiture of compensation from certain Defendants.

8           142. On August 28, 2017, the Parties and the Insurers (comprising approximately  
9 fifteen distinct entities) met for a second mediation session in New York City. At this mediation,  
10 the Parties prepared and gave presentations on key issues affecting the Action, including with  
11 respect to the claims and defenses asserted, proposed corporate governance reforms, and the  
12 damages sought.

13           143. On October 5, 2017, one day after the Court issued its 12(b)(6) Order, the Parties  
14 and the Insurers met for a third mediation session in New York City. In advance of that  
15 mediation, Judge Phillips requested, and the Parties submitted, detailed responses regarding some  
16 of the key arguments that each side had advanced during negotiations to that point. After a full  
17 day of negotiations, the Parties' positions remained significantly far apart. Accordingly, the  
18 Parties concluded their negotiations with no resolution in hand.

19           **B. Mediations with Judge Daniel Weinstein (Ret.) and Jed Melnick, Esq.**

20           144. With no settlement in sight, discovery progressed and Co-Lead Plaintiffs  
21 successfully stayed the parallel California State Derivative Action and the *Connecticut Laborers*  
22 *Action*.

23           145. Then, in mid-June 2018, the Parties revisited mediation. The Parties engaged  
24 retired Judge Daniel Weinstein (Ret.) and Jed Melnick, Esq., both of JAMS Mediation,  
25 Arbitration and ADR Services, to facilitate the renewed settlement negotiations.

26           146. In advance of the first mediation session with Judge Weinstein and Mr. Melnick,  
27 and, at their request, on August 15, 2018, Co-Lead Plaintiffs provided to the mediators a detailed  
28 analysis of the categories of damages recoverable in this Action.

1           147. On September 12, 2018, the Parties exchanged mediation briefs regarding liability  
2 and damages. Co-Lead Plaintiffs submitted a comprehensive brief, covering their key positions  
3 regarding liability, information that had been uncovered during discovery, and an updated  
4 estimate of potential damages incurred by Wells Fargo. The Director Defendants and the Officer  
5 Defendants separately submitted responsive briefs on those topics. In addition, the Insurers  
6 submitted written reports from two experts regarding damages, consistent with the arguments  
7 advanced by the Officer Defendants.

8           148. On September 20, 2018, the Parties and the Insurers met for their fourth mediation  
9 session, in New York City. At the mediators' suggestion, this mediation session was structured  
10 as an "information sharing" session. To that end, the Parties, the Insurers, and their counsel  
11 jointly met to present and defend, their respective positions.

12           149. Following that mediation session, the Parties and the Insurers exchanged briefs on  
13 October 9, 2018, responding to points raised in the briefing exchanged on September 12 and at  
14 the September 20 mediation. Co-Lead Plaintiffs supplemented their arguments about liability  
15 with documents produced in discovery and specifically challenged, with applicable legal  
16 authority, the Officer Defendants' and Insurers' arguments with respect to purported limitations  
17 on calculable damages in this Action. The Officer Defendants and Director Defendants each  
18 submitted a reply brief.

19           150. On October 15 and October 16, 2018, the Parties and the Insurers convened in San  
20 Francisco, California, for their fifth and sixth mediation sessions, respectively. At these  
21 mediation sessions, the Parties and the Insurers continued their negotiations in earnest, including  
22 presenting settlement demands and offers through the mediators. By the end of the second day,  
23 the Parties were unable to reach resolution. However, given the progress made in these sessions,  
24 the Parties agreed to schedule an additional mediation session to allow for further information  
25 sharing and discussion.

26           151. On December 4, 2018, the Parties and the Insurers met in New York City for their  
27 seventh and final mediation session. After a full day of negotiations, including exchanges of  
28 offers and demands, Judge Weinstein and Mr. Melnick presented the Mediators' proposal,

1 consisting of the following principal terms: (i) a monetary payment of \$240 million to be paid by  
2 the Insurers to Wells Fargo; (ii) acknowledgement from Wells Fargo that facts alleged in the  
3 Action were a significant factor in causing certain corporate governance changes undertaken by  
4 Wells Fargo during the pendency of this Action (the “Corporate Governance Reforms”); and (iii)  
5 acknowledgement from Wells Fargo that facts alleged in this Action were a significant factor in  
6 causing certain remedial steps with respect to compensation reductions and forfeitures undertaken  
7 by Wells Fargo during the pendency of this Action (the “Clawbacks”). The Parties would further  
8 agree, as part of the Mediators’ proposal, that the Corporate Governance Reforms and the  
9 Clawbacks have a combined value to Wells Fargo of \$80 million, for a total settlement value to  
10 Wells Fargo of \$320 million, not including Co-Lead Counsel’s fee award. Additionally, in  
11 response to the Insurers’ insistence that certain derivative actions and claims not based on the  
12 Improper Sales Practices (as defined in the Stipulation, the “CPI Derivative Actions”) be resolved  
13 at the same time, the Mediators’ proposal also required the contemporaneous (but unconnected)  
14 resolution of the CPI Derivative Actions.

15 152. On December 12, 2018, the Parties and the Insurers accepted the Mediators’  
16 proposal.

17 153. On January 16, 2019, the Parties submitted a joint case management statement and  
18 notice of settlement informing the Court that they had “recently reached an agreement in principle  
19 to settle this action,” and proposing a briefing schedule for preliminary approval. Dkt. 266 at 2.  
20 On January 21, 2019, the Court issued an Order re Notice of Settlement and Scheduling Order  
21 that adopted the Parties’ proposed briefing schedule, set a preliminary approval hearing for March  
22 21, 2019, and vacated all previous deadlines in the case. Dkt. 267. On February 13, 2019, the  
23 Court entered a stipulation modifying the Parties’ briefing schedule and set a preliminary  
24 approval hearing for April 4, 2019. Dkt. 269.

25 **C. The Settlement Agreement and Preliminary Approval**

26 154. After accepting the Mediators’ proposal, the Parties and the Insurers engaged in  
27 extensive negotiations over approximately two months regarding the material terms of the  
28 Stipulation and various supporting documents, including those describing the Corporate



1 Governance Reforms and Clawbacks, proposed notices to shareholders, and proposed orders for  
2 the Court. Co-Lead Plaintiffs also worked with Wells Fargo to design and implement a notice  
3 plan consistent with Ninth Circuit authority.

4 155. On February 26, 2019, the Parties executed the Stipulation. *See* Dkt. 270-1.

5 156. On February 28, 2019, Co-Lead Plaintiffs filed their motion for preliminary  
6 approval of the Settlement. Dkt. 270.

7 157. On March 20, 2019, the Court issued an order requesting supplemental briefing  
8 regarding the value of the claims being released. Dkt. 271. The Court also vacated the  
9 previously scheduling hearing for April 4, 2019. *Id.* In response, on April 2, 2019, Co-Lead  
10 Plaintiffs filed a supplemental brief addressing the estimated amount of potential damages in this  
11 Action. Dkt. 272.

12 158. On May 14, 2019, the Court entered an order granting preliminary approval of the  
13 Settlement and scheduling a final fairness hearing on the Settlement and related matters for  
14 August 1, 2019, at 2:00 p.m. Dkt. 274.

15 159. Following the Court's order granting preliminary approval, Co-Lead Counsel and  
16 counsel for Wells Fargo implemented an extensive notice program directed to shareholders. A  
17 detailed description of these efforts is provided in the Declaration of Sean A. Petterson, submitted  
18 concurrently herewith.

19 **IV. THE RISKS OF CONTINUED LITIGATION**

20 160. At the time the Parties agreed to the Mediators' proposal on December 12, 2018,  
21 Co-Lead Plaintiffs had a sufficient understanding of the strengths and weaknesses of the claims  
22 and defenses in this Action. Having reviewed voluminous documents produced in discovery, Co-  
23 Lead Plaintiffs had also identified key information and evidence that would be central to their  
24 ability to succeed at trial.

25 161. Despite Co-Lead Plaintiffs' confidence in the strengths of their claims, significant  
26 risks remained in continuing to litigate this Action through trial and a near-certain appeal. Co-  
27 Lead Plaintiffs and Co-Lead Counsel carefully considered these risks before ultimately agreeing  
28 to the Mediators' proposal.

1           162. Some of the most significant risks facing Co-Lead Plaintiffs and Wells Fargo in  
2 continuing to litigate this Action are discussed below.

3           **A. Procedural Risks**

4           163. Despite Co-Lead Plaintiffs' early successes in overcoming Wells Fargo's and  
5 Defendants' motions to dismiss, significant and costly procedural hurdles remained.

6           164. Co-Lead Plaintiffs faced some uncertainty in proceeding through the discovery  
7 process. For example, prior to agreeing to the Mediators' proposal, there were active disputes  
8 between the Parties about the scope of discovery and the extent to which Co-Lead Plaintiffs could  
9 obtain and admit at trial meaningful evidence related to their claims. The resolution of these  
10 disputes, potentially through rulings by the Court, may have significantly affected the strength of  
11 Co-Lead Plaintiffs' position.

12           165. In addition, Co-Lead Plaintiffs reasonably expected that they would need to  
13 oppose summary judgment and *Daubert* motions before going to trial. For instance, in addition to  
14 questions affecting liability and damages, Defendants signaled their intent to seek summary  
15 judgment on the question of demand futility, an issue for which there is little authority at the  
16 summary judgment stage.

17           166. And even assuming the Court ultimately agreed with Co-Lead Plaintiffs that  
18 genuine issues of material fact existed with respect to each of the claims, merely reaching trial  
19 would have imposed significant costs on Wells Fargo and subjected it to continued public  
20 scrutiny.

21           167. Furthermore, Defendants would undoubtedly appeal any favorable verdict, further  
22 elongating the litigation process.

23           168. In short, continued litigation would have (i) taken at least another year, excluding  
24 any appellate process; (ii) subjected Wells Fargo to the disruption and uncertainty inherent in a  
25 trial on the issues; and (iii) deprived the Company of an opportunity to move past the scandal. In  
26 particular, a likely appeal and collateral litigation with the Insurers could possibly place in  
27 jeopardy the primary source of recovery: the underlying D&O insurance policies.

28

1           **B.     Risks of Establishing Liability**

2           169.     Assuming Co-Lead Plaintiffs survived summary judgment, they faced additional  
3 risk in being able to prove liability at trial. For example, in order to establish the core breach of  
4 fiduciary duty claim at trial, Co-Lead Plaintiffs would bear the burden of proving that Defendants  
5 (i) had actual or constructive knowledge of the misconduct, and (ii) failed to act in the face of a  
6 known duty to act, thereby demonstrating conscious disregard for their responsibilities. While  
7 Co-Lead Counsel believed significant evidence existed to support a finding of liability,  
8 Defendants indicated that they would have presented countervailing evidence of the Board's  
9 remedial efforts following the September 2016 disclosure of the Improper Sales Practices,  
10 including the expansion of internal controls and management-level efforts to prevent future sales  
11 practice violations, such as: (i) establishing working groups, as well as engaging third-party  
12 consultants, to identify, analyze, and rectify sales practices violations; (i) conducting town hall  
13 meetings with employees to encourage the reporting of sales-related misconduct; and (i)  
14 encouraging reporting of the progress of sales practice remediation initiatives. While Co-Lead  
15 Plaintiffs would have argued those actions were illusory and inadequate based on facts developed  
16 in discovery, there was a significant risk the jury would find the evidence failed to demonstrate  
17 Defendants' knowledge or conscious disregard of wrongdoing.

18           170.     Indeed, Co-Lead Counsel is unaware of any instance in which a *Caremark* breach  
19 of fiduciary duty claim has been successfully tried in a shareholder derivative action.

20           **C.     Risks Related to Damages**

21           171.     Even if liability could be established, Co-Lead Plaintiffs faced risks in establishing  
22 and recovering damages.

23           172.     Co-Lead Plaintiffs would have sought approximately \$1.1 billion in out-of-pocket  
24 damages, consisting of \$529 million in civil and regulatory fines, penalties, and payments; \$443  
25 million in investigation and litigation costs; and \$138 million in remediation efforts. Dkt. 272 at  
26 1. Co-Lead Plaintiffs would have also sought between \$1.4 billion and \$2.4 billion in lost actual  
27 or potential income. *Id.* at 2.

1           173. In response, Defendants would have disputed the existence and the extent of  
2 recoverable damages that flowed from any alleged misconduct. For example, Defendants would  
3 have challenged whether any of the damages asserted were proximately caused by Defendants'  
4 alleged misconduct, as opposed to the misconduct of others. Defendants would have also argued  
5 that most if not all of the payments by the Company in connection with the Improper Sales  
6 Practices scandal were part of its ongoing course of business operations, not cognizable derivative  
7 damages. Moreover, Defendants would have disputed whether any actual damages incurred  
8 would need to be offset by the benefits that Defendants' decisions conferred on the Company.

9           174. In addition, Defendants would have disputed that Wells Fargo suffered any harm  
10 in the form of lost income, given the Company's substantial profits even after the revelation of  
11 the Improper Sales Practices. For example, even if Wells Fargo did suffer lost income,  
12 Defendants would contend any lost income was attributable to other causes, such as general  
13 market effects, the conduct of employees independent of any wrongdoing by Defendants, or  
14 unrelated issues that the Company was experiencing at the time.

15           175. Separately, it was far from certain that a jury finding liability would have also  
16 imposed monetary damages in excess of the \$240 million in cash consideration secured by the  
17 Settlement. For example, the Officer Defendants would have argued that several of them were  
18 required to forfeit or reduce their compensation to the Company in the wake of revelations of the  
19 Improper Sales Practices, in an amount totaling over \$180 million. A jury could very well have  
20 found that an especially large monetary judgment against the Defendants would be inappropriate  
21 in light of these substantial compensation actions.

22           176. Thus, even if Co-Lead Plaintiffs succeeded through trial and appeal, they faced the  
23 real risk that the Company could have obtained a recovery that was significantly inferior to the  
24 one offered through the Settlement—or no recovery at all.

25 **V. CO-LEAD PLAINTIFFS' EFFORTS ON BEHALF OF WELLS FARGO**

26           177. Based on our collective experience in complex commercial litigation and  
27 derivative actions, it is our professional opinion that Co-Lead Plaintiffs willingly, constructively,  
28 and effectively contributed to the prosecution of the claims on behalf of Wells Fargo.

1           178. Each Co-Lead Plaintiff participated in the lead plaintiff application process;  
2 participated in discussions with Co-Lead Counsel concerning significant developments in the  
3 litigation; reviewed and conferred with Co-Lead Counsel on Rule 26(a) initial disclosures;  
4 reviewed and commented on significant pleadings and briefs; attended hearings; conferred with  
5 Co-Lead Counsel regarding discovery efforts; attended mediation sessions; consulted with Co-  
6 Lead Counsel concerning settlement negotiations as they progressed; and evaluated, approved,  
7 and recommended the approval of the proposed Settlement to the Co-Lead Plaintiffs' respective  
8 boards.

9           179. A more detailed description of each Co-Lead Plaintiff's efforts is provided in the  
10 Declaration of Kevin B. Lindahl, Esq., and the Declaration of James Love, Esq., submitted  
11 concurrently herewith.

12           180. Given the substantial efforts described above and in their respective declarations,  
13 each Co-Lead Plaintiff spent significant time contributing to the litigation and resolution of this  
14 Action. In light of this commitment of time and effort, including the cost to Co-Lead Plaintiffs  
15 of the time their representatives devoted to this Action that would have otherwise been devoted to  
16 other work on behalf of those institutions, we believe Ninth Circuit and Northern District  
17 authorities support awarding each Co-Lead Plaintiff \$25,000, to be paid from Co-Lead Counsel's  
18 fee award.

19 **VI. SUPPORTING DOCUMENTS**

20           181. In further support of (i) Co-Lead Plaintiffs' motion for final approval of the  
21 proposed Settlement, and (ii) Co-Lead Counsel's motion for an award of attorney's fees and for  
22 reimbursement awards, we attach the following documents and declarations.

23           182. Attached hereto as Exhibit A is a true and correct copy of the Declaration of Brian  
24 T. Fitzpatrick in Support of Co-Lead Counsel's Motion for Award of Attorneys' Fees and  
25 Reimbursement Awards to Co-Lead Plaintiffs.

26           183. Attached hereto as Exhibit B is a true and correct copy of the Declaration of  
27 Jeffrey N. Gordon in Support of Co-Lead Plaintiffs' Motion for Final Approval of Settlement.  
28

184. Attached hereto as Exhibit C is a true and correct copy of the Declaration of Sean A. Petterson Regarding Settlement Notice.

185. Attached hereto as Exhibit D is a true and correct copy of the Declaration of Kevin B. Lindahl, Esq. in Support of Reimbursement Award to Co-Lead Plaintiff Fire & Police Pension Association of Colorado.

186. Attached hereto as Exhibit E is a true and correct copy of the Declaration of James D. Love, Esq. in Support of Reimbursement Award to Co-Lead Plaintiff The City of Birmingham Retirement and Relief System.

187. Attached hereto as Exhibit F is a true and correct Summary of Plaintiffs' Counsel's Lodestar.

188. Attached hereto as Exhibit G is a true and correct copy of the Declaration of Richard M. Heimann in Support of Co-Lead Counsel's Motion for Award of Attorneys' Fees and Reimbursement Awards to Co-Lead Plaintiffs.

189. Attached hereto as Exhibit H is a true and correct copy of the Declaration of Joseph E. White, III in Support of Co-Lead Counsel's Motion for Award of Attorneys' Fees and Reimbursement Awards to Co-Lead Plaintiffs.

190. Attached hereto as Exhibit I is a true and correct copy of the Declaration of Daniella Quitt in Support of Co-Lead Counsel's Motion for Award of Attorneys' Fees Filed on Behalf of Glancy Prongay & Murray LLP.

191. Attached hereto as Exhibit J is a true and correct copy of the Declaration of Shane P. Sanders in Support of Co-Lead Counsel's Motion for Award of Attorneys' Fees Filed on Behalf of Robbins Arroyo LLP.

192. Attached hereto as Exhibit K is a true and correct copy of the Declaration of Bruce E. Jameson in Support of Co-Lead Counsel's Motion for Award of Attorneys' Fees Filed on Behalf of Prickett, Jones & Elliott, P.A.

193. Attached hereto as Exhibit L is a true and correct copy of the Declaration of Daniel B. Rehns of Hach Rose Schirripa & Cheverie LLP in Support of Co-Lead Counsel's Motion for Award of Attorneys' Fees.

1           We declare under penalty of perjury under the laws of the United States of America that  
2 the foregoing is true and correct.

3           Executed on this 27th day of June, 2019, at San Francisco, California and Boca Raton,  
4 Florida.

5  
6  
7           By: /s/ Richard M. Heimann  
              Richard M. Heimann

              By: /s/ Joseph E. White, III  
                  Joseph E. White, III